STATE OF NEW YORK

2877

2023-2024 Regular Sessions

IN ASSEMBLY

January 27, 2023

Introduced by M. of A. OTIS -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to strengthening of utility storm response and compliance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 25 of the public service law, as added by chapter 665 of the laws of 1980, subdivision 2, paragraph (a) of subdivision 3 and paragraph (a) of subdivision 4 as amended by chapter 375 of the laws of 1986, is amended to read as follows:

§ 25. Penalties. 1. Every public utility company, corporation or person and the officers, agents and employees thereof shall obey and comply with every provision of this chapter and every order or regulation adopted under authority of this chapter so long as the same shall be in force.

2. Any public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter **or a regulation** or [~~an~~] order adopted under authority of this chapter so long as the same shall be in force, shall forfeit to the people of the state of New York a sum [~~not exceeding one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense~~] **that shall be set by the public service commission after considering the following:**

(a) the scope of damages caused by the violation to individuals, businesses and the state;

(b) each individual act or omission which led to the violation;

(c) whether the violation was knowing or willful;

(d) whether the violation was recurring, or had been the subject of a previous finding by the commission;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(e) whether the violation was of a provision of this chapter, or a regulation or order adopted under the authority of this chapter, adopted specifically for the protection of human safety, including but not limited to the commission's code of gas safety regulations, and whether the violation caused or constituted a contributing factor in bringing about a death or personal injury, as determined by the commission;

(f) whether the violation was of a provision of this chapter, or a regulation or order adopted under the authority of this chapter, specifically designed to protect the overall reliability and continuity of service, the duration of any such violation, whether such violation affected the reliability or continuity of service, the duration of any such effect on the reliability or continuity of service, and whether any effect on the reliability or continuity of service was recurring;

(g) the economic losses of ratepayers, in the form of increased service rates or otherwise, associated with damage to or weakening of infrastructure in connection with the event out of which the violation arose, including but not limited to investments and costs associated with repairing, improving, or replacing such infrastructure;

(h) whether the violation was caused in whole or in part due to the systematic failure of the entity to maintain or replace obsolete or deteriorated materials or equipment;

(i) the degree of preparation, including but not limited to the utilization of mutual aid or other contingent resources, for a storm event or other event out of which the violation arose for which there was advance warning or notice;

(j) with respect to telephone corporations, cable television companies and the officers, agents and employees thereof, whether a loss of commercial electricity caused the violation; and

(k) mitigating factors relevant to the seriousness of the violation, as determined by the commission.

3. [~~Notwithstanding the provisions of subdivision two of this section, any such public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter, adopted specifically for the protection of human safety, including but not limited to the commission's code of gas safety regulations shall, if it is determined by the commission that such safety violation caused or constituted a contributing factor in bringing about a death or personal injury, forfeit to the state of New York a sum not to exceed the greater of:~~

~~(a) two hundred and fifty thousand dollars constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(b) the maximum forfeiture determined in accordance with subdivision two of this section.~~

~~4. Notwithstanding the provisions of subdivision one or two of this section, a public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the~~

~~overall reliability and continuity of electric service, shall forfeit to the state of New York a sum not to exceed the greater of:~~

~~(a) five hundred thousand dollars constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(b) the maximum forfeiture determined in accordance with subdivision two of this section.~~

~~5.~~] Penalties provided for pursuant to this section shall be recovered in an action as provided in section twenty-four of this article.

[~~6~~] **4**. Any payment made by a public utility company, corporation or person and the officers, agents and employees thereof as a result of an action as provided in section twenty-four of this article and the cost of litigation and investigation related to any such action shall not be included by the commission in revenue requirements used to establish rates and charges.

[~~7~~] **5**. In construing and enforcing the provisions of this chapter relating to forfeitures and penalties, the act of any director, officer, agent or employee of a public utility company, corporation or person acting within the scope of his or her official duties or employment shall be deemed to be the act of such public utility company, corporation or person.

§ 2. Section 25-a of the public service law, as added by section 2 of part X of chapter 57 of the laws of 2013, is amended to read as follows:

§ 25-a. Combination gas and electric corporations; administrative sanctions; recovery of penalties. Notwithstanding sections twenty-four and twenty-five of this article: 1. Every combination gas and electric corporation and the officers thereof shall adhere to every provision of this chapter and every order or regulation adopted under authority of this chapter so long as the same shall be in force.

2. (a) The commission shall have the authority to assess a civil penalty **in an amount as set forth in this section and** against a combination gas and electric corporation and the officers thereof subject to the jurisdiction, supervision, or regulation pursuant to this chapter [~~in an amount as set forth in this section. In determining the amount of any penalty to be assessed pursuant to this section, the commission shall consider: (i) the seriousness of the violation for which a penalty is sought; (ii) the nature and extent of any previous violations for which penalties have been assessed against the corporation or officer; (iii) whether there was knowledge of the violation; (iv) the gross revenues and financial status of the corporation; and (v) such other factors as the commission may deem appropriate and relevant~~].

The remedies provided by this subdivision are in addition to any other remedies provided in law.

(b) Whenever the commission has reason to believe that a combination gas and electric corporation or such officers thereof should be subject to imposition of a civil penalty as set forth in this subdivision, it shall notify such corporation or officer. Such notice shall include, but shall not be limited to: (i) the date and a brief description of the facts and nature of each act or failure to act for which such penalty is proposed; (ii) a list of each statute, regulation or order that the commission alleges has been violated; [~~and~~] (iii) the amount of each penalty that the commission proposes to [~~assess~~] **be assessed; and (iv)**

any proposed actions that the commission deems necessary to address such alleged violation or violations. The commission is authorized to undertake any additional administrative or investigatory actions related to such violation or violations, including but not limited to, service of an administrative complaint, implementation of discovery, interviews, depositions, entering into a settlement agreement or other stipulation, and the holding of evidentiary hearings, as provided in this chapter.

(c) Whenever the commission has reason to believe that a combination gas and electric corporation or such officers thereof should be subject to imposition of a civil penalty or penalties as set forth in this subdivision, the commission shall hold a hearing to demonstrate why the proposed penalty or penalties should be assessed against such combination gas and electric corporation or such officers.

3. Any combination gas and electric corporation or such officers thereof determined by the commission to have failed to [~~reasonably~~] comply as shown by a preponderance of the evidence, at an evidentiary hearing, with a provision of this chapter, regulation or an order adopted under authority of this chapter so long as the same shall be in force shall forfeit a sum [~~not exceeding the greater of one hundred thousand dollars or two one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense~~] that shall be set by the public service commission, after considering the following:

(a) the scope of damages caused by the violation to individuals, businesses and the state;

(b) each individual act or omission which led to the violation;

(c) whether the violation was knowing or willful;

(d) whether the violation was recurring, or had been the subject of a previous finding by the commission;

(e) whether the violation was of a provision of this chapter, or a regulation or order adopted under the authority of this chapter, adopted specifically for the protection of human safety, including but not limited to the commission's code of gas safety regulations, and whether the violation caused or constituted a contributing factor in bringing about a death or personal injury, as determined by the commission;

(f) whether the violation was of a provision of this chapter, or a regulation or order adopted under the authority of this chapter, specifically designed to protect the overall reliability and continuity of service, the duration of any such violation, whether such violation affected the reliability or continuity of service, the duration of any such effect on the reliability or continuity of service, and whether any effect on the reliability or continuity of service was recurring;

(g) the economic losses of ratepayers, in the form of increased service rates or otherwise, associated with damage to or weakening of infrastructure in connection with the event out of which the violation arose, including but not limited to investments and costs associated with repairing, improving, or replacing such infrastructure;

(h) whether the violation was caused in whole or in part due to the systematic failure of the entity to maintain or replace obsolete or deteriorated materials or equipment;

(i) the degree of preparation, including but not limited to the utilization of mutual aid or other contingent resources, for a storm event or

other event out of which the violation arose for which there was advance warning or notice;

(j) with respect to any telephone corporation or cable television company to which this section applies by reason of the application of section twenty-five-b of this article, and with respect to any officer of any such telephone corporation or cable television company, whether a loss of commercial electricity caused the violation; and

(k) mitigating factors relevant to the seriousness of the violation, as determined by the commission.

4. [~~Notwithstanding the provisions of subdivision three of this section, any such combination gas and electric corporation determined by the commission to have failed to reasonably comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter specifically for the protection of human safety or prevention of significant damage to real property, including, but not limited to, the commission's code of gas safety regulations shall, if it is determined by the commission by a preponderance of the evidence that such safety violation caused or constituted a contributing factor in bringing about: (a) a death or personal injury; or (b) damage to real property in excess of fifty thousand dollars, forfeit a sum not to exceed the greater of:~~

~~(i) two hundred fifty thousand dollars or three one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph, each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(ii) the maximum forfeiture determined in accordance with subdivision three of this section.~~

~~5. Notwithstanding the provisions of subdivision three or four of this section, a combination gas and electric corporation determined by the commission to have failed to reasonably comply by a preponderance of the evidence with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, including but not limited to the restoration of electric service following a major outage event or emergency, shall forfeit a sum not to exceed the greater of:~~

~~(a) five hundred thousand dollars or four one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(b) the maximum forfeiture determined in accordance with subdivision three of this section.~~

~~6. Any officer of any combination gas and electric corporation determined by the commission to have violated the provisions of subdivision three, four, or five of this section, and who knowingly violates a~~

~~provision of this chapter, regulation or an order adopted under authority of this chapter so long as the same shall be in force shall forfeit a sum not to exceed one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.~~

~~7. Any such assessment may be compromised or discontinued by the commission.~~] All moneys recovered pursuant to this section, together with the costs thereof, shall be remitted to, or for the benefit of, the ratepayers in a manner to be determined by the commission.

[~~8.~~] 5. Upon a failure by a combination gas and electric corporation or officer to remit any penalty assessed by the commission pursuant to this section, the commission, through its counsel, may institute an action or special proceeding to collect the penalty in a court of competent jurisdiction.

[~~9.~~] 6. Any payment made by a combination gas and electric corporation or the officers thereof as a result of an assessment or penalty as provided in this section, and the cost of litigation and investigation related to any such assessment, shall not be recoverable from ratepayers.

[~~10.~~] 7. In construing and enforcing the provisions of this chapter relating to penalties, the act of any director, officer, agent or employee of a combined gas and electric corporation acting within the scope of his or her official duties or employment shall be deemed to be the act of such corporation.

[~~11.~~] 8. It shall be a violation of this chapter should a director, officer or employee of a public utility company, corporation, person acting in his or her official duties or employment, or an agent acting on behalf of an employer take retaliatory personnel action such as discharge, suspension, demotion, penalization or discrimination against an employee for reporting a violation of a provision of this chapter [~~of~~] or an order or regulation adopted under the authority of this chapter, including, but not limited to, those governing safe and adequate service, protection of human safety or prevention of significant damage to real property, including, but not limited to, the commission's code of gas safety. Nothing in this subdivision shall be deemed to diminish the rights, privileges or remedies of any employee under any other law or regulation, including but not limited to article twenty-C of the labor law and section seventy-five-b of the civil service law, or under any collective bargaining agreement or employment contract.

§ 3. The public service law is amended by adding a new section 25-b to read as follows:

§ 25-b. Administrative actions against other regulated entities. Notwithstanding any other provision of this chapter, section twenty-five-a of this article shall apply in equal force to: 1. an electric corporation as defined in subdivision thirteen of section two of this article; 2. a gas corporation as defined in subdivision eleven of section two of this article; 3. a cable television company or cable television system as defined in subdivisions one and two of section two hundred twelve of this article; 4. a telephone corporation as defined in subdivision seventeen of section two of this article; 5. a steam corporation as defined in subdivision twenty-two of section two of this article; and 6. a water-works corporation as defined in subdivision twenty-seven of section two of this article; as well as the officers or employees of any such corporate entities described above.

§ 4. Subdivision 21 of section 66 of the public service law, as amended by section 4 of part X of chapter 57 of the laws of 2013, para-

graph (a) as separately amended by chapters 395 and 743 of the laws of 2022, subparagraph (iii) of paragraph (a) as separately amended by chapter 727 of the laws of 2022, is amended to read as follows:

21. (a) Each electric corporation subject to section twenty-five-a of this chapter shall annually, on or before December fifteenth, submit to the commission an emergency response plan for review and approval. The emergency response plan shall be designed for the reasonably prompt restoration of service in the case of an emergency event, defined for purposes of this subdivision as an event where widespread outages have occurred in the service territory of the company due to storms, cyber attack, or other causes beyond the control of the company. The emergency response plan shall include, but need not be limited to, the following: (i) the identification of management staff responsible for company operations during an emergency; (ii) a communications **plan that includes: (A) a** system [~~with~~] **that communicates service information to** customers during an emergency that extends beyond normal business hours and business conditions; [~~(iii)~~] **(B)** identification of and outreach plans to customers who had documented their need for essential electricity for medical needs, which shall include but not be limited to, apnea monitors for infants, cuirass respirators, hemodialysis machines, IV feeding machines, IV medical infusion machines, oxygen concentrators, positive pressure respirators, respirator/ventilators, rocking bed respirators, suction machines, tank type respirators, as well as any medical equipment or equipment necessary for an individual whose diagnosis is likely to be significantly triggered or significantly exacerbated by a continued loss of power that will adversely impact that individual's health; [~~(iv)~~] **(C)** identification of and outreach plans to customers who had documented their need for essential electricity to provide critical telecommunications, critical transportation, critical fuel distribution services or other large-load customers identified by the commission; [~~(v)~~] **(D)** designation of company staff to communicate with local officials and appropriate regulatory agencies; [~~(vi)~~] **and (E) identifies, tests and verifies redundancies in communications systems; (iii)** provisions regarding how the company will assure the safety of its employees and contractors; [~~(vii)~~] **(iv)** procedures for deploying company and mutual aid crews to work assignment areas; [~~(viii)~~] **(v)** identification of additional supplies and equipment needed during an emergency; [~~(ix)~~] **(vi)** the means of obtaining additional supplies and equipment; [~~(x)~~] **(vii)** procedures to practice the emergency response plan; [~~(xi)~~] **(viii)** appropriate safety precautions regarding electrical hazards, including plans to promptly secure downed wires within thirty-six hours of notification of the location of such downed wires from a municipal emergency official; [~~(xii)~~] **(ix)** plans setting forth how the communication and coordination of efforts between the electric corporation, electric corporation employees, electric corporation company crews, mutual aid crews, other utilities, local governments and any other entity performing services to assist such electric corporation shall occur; and [~~(xiii)~~] **(x)** such other additional information as the commission may require. Each such corporation shall, on an annual basis, undertake drills implementing procedures to practice its emergency management plan. The commission may adopt additional requirements consistent with ensuring the reasonably prompt restoration of service in the case of an emergency event.

(b) After review of a corporation's emergency response plan, the commission may require such corporation to amend the plan. The commission may also open an investigation of the corporation's plan to deter-

mine its sufficiency to respond adequately to an emergency event. If, after hearings, the commission finds a material deficiency in the plan, it may order the company to make such modifications that it deems reasonably necessary to remedy the deficiency.

(c) The commission is authorized to open an investigation to review the performance of any corporation in restoring service**, implementing communications plans** or otherwise meeting the requirements of the emergency response plan during an emergency event. If, after evidentiary hearings or other investigatory proceedings, the commission finds that the corporation failed to [~~reasonably~~] implement its emergency response plan or the length of such corporation's outages were materially longer than they would have been, because of such corporation's failure to [~~reasonably~~] implement its emergency response plan, the commission may deny the recovery of any part of the service restoration costs caused by such failure, commensurate with the degree and impact of the service outage; provided, however, that nothing herein limits the commission's authority to otherwise commence a proceeding pursuant to sections twenty-four, twenty-five and twenty-five-a of this chapter.

(d) The commission shall certify to the department of homeland security and emergency services that each such corporation's emergency response plan is sufficient to ensure to the greatest extent feasible the timely and safe restoration of energy services after an emergency in compliance with the requirements of this chapter.

(e) The filing of each emergency response plan required under paragraph (a) of this subdivision shall also include a copy of all written mutual assistance agreements among utilities.

(f) Each electric corporation shall file with the county executive or the chief elected official of a county for each county within its service territory the most recent approved copy of the emergency response plan required pursuant to this section. For the purposes of an electric corporation operating within the city of New York, such corporation shall file the most recent approved emergency response plan with the emergency management office of the city of New York.

(g) The commission shall provide access to such emergency response plan pursuant to article six of the public officers law.

§ 5. Section 94 of the public service law is amended by adding a new subdivision 5 to read as follows:

5. (a) Each corporation subject to this article shall annually, on or before December fifteenth, submit to the commission an emergency response plan for review and approval. The emergency response plan shall be designed for the reasonably prompt restoration of service in the case of an emergency event, defined for purposes of this subdivision as an event where widespread outages have occurred in the service territory of the company due to storms or other causes beyond the control of the company. The emergency response plan shall include, but need not be limited to, the following: (i) the identification of management staff responsible for company operations during an emergency; (ii) a communications plan that includes (A) a system that communicates service information to customers during an emergency that extends beyond normal business hours and business conditions; (B) designation of company staff to communicate with local officials and appropriate regulatory agencies; and (C) identifies, tests and verifies redundancies in communications systems; (iii) provisions regarding how the company will ensure the safety of its employees and contractors; (iv) procedures for deploying personnel crews to work assignment areas; (v) identification of additional supplies and equipment needed during an emergency; (vi) the means

of obtaining additional supplies and equipment; (vii) procedures to practice the emergency response plan; and (viii) such other additional information as the commission may require. Each such corporation shall, on an annual basis, undertake drills implementing procedures to practice its emergency management plan. The commission may adopt additional requirements consistent with ensuring the reasonably prompt restoration of service in the case of an emergency event.

(b) After review of a corporation's emergency response plan, the commission may require such corporation to amend the plan. The commission may also open an investigation of the corporation's plan to determine its sufficiency to respond adequately to an emergency event. If, after hearings, the commission finds a material deficiency in the plan, it may order the company to make such modifications that it deems reasonably necessary to remedy the deficiency.

(c) The commission is authorized to open an investigation to review the performance of any corporation in restoring service, implementing communications plans or otherwise meeting the requirements of the emergency response plan during an emergency event.

(d) Each corporation subject to this article shall file with the county executive or the chief elected official of a county for each county within its service territory the most recent approved copy of the emergency response plan required pursuant to this section. For the purposes of a corporation operating within the city of New York, such corporation shall file the most recent approved emergency response plan with the emergency management office of the city of New York.

(e) The commission shall provide access to such emergency response plan pursuant to article six of the public officers law.

§ 6. Section 216 of the public service law is amended by adding a new subdivision 4-a to read as follows:

4-a. (a) Each corporation subject to this article shall annually, on or before December fifteenth, submit to the commission an emergency response plan for review and approval. The emergency response plan shall be designed for the reasonably prompt restoration of service in the case of an emergency event, defined for purposes of this subdivision as an event where widespread outages have occurred in the service territory of the company due to storms or other causes beyond the control of the company. The emergency response plan shall include, but need not be limited to, the following: (i) the identification of management staff responsible for company operations during an emergency; (ii) a communications plan which includes: (A) a system that communicates service information to customers during an emergency that extends beyond normal business hours and business conditions; (B) designation of company staff to communicate with local officials and appropriate regulatory agencies; and (C) identifies, tests and verifies redundancies in communications systems; (iii) provisions regarding how the company will ensure the safety of its employees and contractors; (iv) procedures for deploying personnel crews to work assignment areas; (v) identification of additional supplies and equipment needed during an emergency; (vi) the means of obtaining additional supplies and equipment; (vii) procedures to practice the emergency response plan; and (viii) such other additional information as the commission may require. Each such corporation shall, on an annual basis, undertake drills implementing procedures to practice its emergency management plan. The commission may adopt additional requirements consistent with ensuring the reasonably prompt restoration of service in the case of an emergency event.

(b) After review of a corporation's emergency response plan, the commission may require such corporation to amend the plan. The commission may also open an investigation of the corporation's plan to determine its sufficiency to respond adequately to an emergency event. If, after hearings, the commission finds a material deficiency in the plan, it may order the company to make such modifications that it deems reasonably necessary to remedy the deficiency.

(c) The commission is authorized to open an investigation to review the performance of any corporation in restoring service, implementing communications plans or otherwise meeting the requirements of the emergency response plan during an emergency event.

(d) Each corporation subject to this article shall file with the county executive or the chief elected official of a county for each county within its service territory the most recent approved copy of the emergency response plan required pursuant to this section. For the purposes of a corporation operating within the city of New York, such corporation shall file the most recent approved emergency response plan with the emergency management office of the city of New York.

(e) The commission shall provide access to such emergency response plan pursuant to article six of the public officers law.

§ 7. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that if chapter 743 of the laws of 2022 shall not have taken effect on or before such date, then the amendments to paragraph (a) of subdivision 21 of section 66 of the public service law made by section four of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect. Effective immediately, the department of public service or the public service commission is authorized to promulgate any regulations or orders necessary to implement this act.